



To: Michigan House of Representatives
Criminal Justice Committee

From: D/Lt. Bruce A. Morningstar
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Date: March 26, 2014

Re: SB 729

Chairman Heise and members of the House Criminal Justice Committee:

Thank you for the opportunity to provide testimony regarding SB 729. This is a very important bill for taxpayers in the State of Michigan. The following supporting documents are attached:

- Law Enforcement Investigative Cost Recovery – Retail Fraud
- Warrant summary.
- Failure to Appear (FTA) – Cost Recovery Justification
- Florida Cost recovery statutes and procedures.
- “Recouping Investigative Costs from Convicted Criminals” – by Judge Scott J. Silverman, Dade County.
- Sample Florida case docket.
- MCL 769.1f – Currently authorized reimbursable expenses.
- MCL 257.625- Operating While Intoxicated – currently reimbursable.
- MCL 750.145d – Use of Computer to Commit Crime – currently reimbursable.
- MCL 750.356c – Retail Fraud 1st Degree.
- MCL 750.356d – Retail Fraud 2nd or 3rd Degree.
- MCL 600.2953 – Retail Fraud – Civil remedy for retail establishment.
- MCL 752.1081 – 752.1084 – Organized Retail Crime.

LAW ENFORCEMENT INVESTIGATIVE COST RECOVERY – RETAIL FRAUD

STATISTICAL ANALYSIS

Statewide and local statistics from 2012 reveal important information about the prevalence of retail fraud (shoplifting) in our state and local communities.

- Over 30,000 retail fraud incidents were reported to the police throughout the state.
- Approximately 73% of all larceny arrests in the state were related to retail fraud.
- Fruitport Township Police Department handled 382 retail fraud complaints in 2012, an average of over one per day.
- Processing a retail fraud complaint, from start-to-finish, consumes approximately 3 hours of law enforcement time.
- Time consumed by retail fraud complaints handled by Fruitport Township Police Department, in terms of FTE, was .55. That is, over half of the time of the equivalent of one full-time employee is spent handling retail fraud complaints. In a community that typically has only two road patrol units on at a time, this is significant. It has a direct relationship to response time for calls for other calls for service in the community, and it has a direct impact on law enforcement's ability to provide good service to other taxpayers and victims of crime in our community.

RETAIL FRAUD – DRAIN ON LAW ENFORCEMENT RESOURCES

- Average of over one (1) Retail Fraud complaint per day.
- Some days we respond to none – other days, we respond to multiple.
- Typically, two road-patrol cars on duty at a time to cover the entire township. Some days, both cars are tied up on Retail Fraud complaints at separate locations.
- Sometimes multiple offenses and multiple offenders at the same location at the same time.

RETAIL FRAUD STATISTICS – SELECTED COUNTIES IN MICHIGAN

COUNTY	Total # of Reported Retail Fraud Incidents (2012)
Calhoun	650
Eaton	528
Genessee	1693
Ingham	847
Jackson	563
Kalamazoo	1462
Kent	3233
Livingston	366
Macomb	2791
Monroe	453
Muskegon	881
Oakland	3366
Ottawa	652
Saginaw	646
Washtenaw	929
Wayne	5363

Note: The above selected counties were included due to the high frequency of retail fraud incidents reported in their jurisdictions. The above includes only those counties in which an average of over one Retail Fraud incident was reported per day.

LARCENY ARRESTS – MICHIGAN – 2012

LARCENY TYPE	# ARRESTS TOTAL	% TOTAL LARCENY ARRESTS
Larceny – Other	3,344	12.20%
Larceny – Pickpocketing	102	0.37%
Larceny – Pursesnatching	99	0.36%
Larceny - Theft from Building	2,148	7.84%
Larceny - From Coin Operated Machine / Device	65	0.24%
Larceny - Theft from Motor Vehicle	1,403	5.12%
Larceny - Theft of Motor Vehicle Parts / Accessories	241	0.88%
Retail Fraud Theft	20,003	72.99%
TOTAL LARCENY ARRESTS	27,405	

INVESTIGATING RETAIL FRAUD

- Respond to the store.
- Interview complainant / witness(es).
- Identify / interview suspect(s).
- Run LEIN check to determine outstanding warrants / runaway status / etc.
- Photograph evidence.
- Transport / lodge suspect at jail.
- Secure evidence.
- Type report.
- Transport paperwork to Prosecutor's Office.
- Swear to arrest warrant.
- Court appearance / court testimony.
- Purge evidence from evidence room upon completion of case (and after appeal time).
- Complicating factors:
 - Organized Retail Crime.
 - Suspect flees – plate obtained – have to identify and locate suspect. May have to do a search warrant.
 - Juvenile – have to locate parents and transport home or wait for parent to arrive.

LAW ENFORCEMENT IS LEFT OUT OF THE COST RECOVERY PROCESS

Upon conviction, offenders in Retail Fraud incidents may be ordered to pay the following:

- Civil penalty to the RETAIL STORE.
- Fines and COURT COSTS.
- Jail sentence daily INCARCERATION COSTS.
- PROBATION OVERSIGHT fees.

From start to finish, the only involved entity – including other taxpayer-funded entities - without recourse for seeking reimbursement is LAW ENFORCEMENT.

OFFENDERS SHOULD BE HELD ACCOUNTABLE FOR INVESTIGATIVE COSTS

- Current laws in Michigan allow for cost recovery for law enforcement expenses relating to other crimes, such as alcohol/drug-related driving offenses and computer crime investigations. Investigative cost recovery laws should be expanded in Michigan to include other offenses as well.
- Good, law-abiding, tax-paying citizens who pay for police protection should not have to pay for increased costs for the investigation of the criminal activity of those in society who make conscious decisions to victimize others. Nor should their police services be impacted (in terms of response time and quality) due to the poor choices of offenders. The offenders should be held responsible for the costs.
- The retail stores are victims in these types of incidents. The victim should not be asked to pay for investigative costs for crimes perpetrated against them – we should not re-victimize the victim. The offenders should be held responsible for these costs.
- Tax revenues generated from the retail businesses in our community that are repeatedly victimized do not cover law enforcement's costs for response and investigation of these repeated incidents.
- Other states (Florida, for example) have laws allowing for recovery of investigative costs from offenders.

ADDITIONAL CONSIDERATIONS

- Michigan's Retail Fraud law was amended in 1998 by Act 311 to increase the dollar amount threshold from \$100 to \$1,000 for the offense to be classified as a felony, thereby relaxing the criminal ramifications for offenders of a commonly committed crime.
- A local study of offenders in Retail Fraud incidents in 2012 in Fruitport Township revealed approximately 56% of the offenders were from outside the community, victimizing businesses in our community.
- Organized Retail Crime is prevalent throughout the state. Legislation (effective March 31, 2013) was passed to address this very issue, and an Organized Retail Crime Advisory Board was developed – by statute – to address these crimes. In order to properly address Organized Retail Crime in the state, law enforcement needs to conduct good preliminary investigations with Retail Fraud offenders to make a determination about whether the offender is engaged in more extensive criminal behavior.

THE CODE OF CRIMINAL PROCEDURE (EXCERPT)

Act 175 of 1927

769.1f Expenses for which court may order person convicted to reimburse state or local unit of government; payment; reimbursement as condition of probation or parole; enforcement of order; expenses for emergency response; definitions.

Sec. 1f. (1) As part of the sentence for a conviction of any of the following offenses, in addition to any other penalty authorized by law, the court may order the person convicted to reimburse the state or a local unit of government for expenses incurred in relation to that incident including but not limited to expenses for an emergency response and expenses for prosecuting the person, as provided in this section:

(a) A violation or attempted violation of section 601d, 625(1), (3), (4), (5), (6), or (7), section 625m, or section 626(3) or (4) of the Michigan vehicle code, 1949 PA 300, MCL 257.601d, 257.625, 257.625m, and 257.626, or of a local ordinance substantially corresponding to section 601d(1), 625(1), (3), or (6) or section 625m or 626 of the Michigan vehicle code, 1949 PA 300, MCL 257.601d, 257.625, 257.625m, and 257.626.

(b) Felonious driving, negligent homicide, manslaughter, or murder, or attempted felonious driving, negligent homicide, manslaughter, or murder, resulting from the operation of a motor vehicle, snowmobile, ORV, aircraft, vessel, or locomotive engine while the person was impaired by or under the influence of intoxicating liquor or a controlled substance, as defined in section 7104 of the public health code, 1978 PA 368, MCL 333.7104, or a combination of intoxicating liquor and a controlled substance, or had an unlawful blood alcohol content.

(c) A violation or attempted violation of section 82127 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.82127.

(d) A violation or attempted violation of section 81134 or 81135 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.81134 and 324.81135.

(e) A violation or attempted violation of section 185 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.185.

(f) A violation or attempted violation of section 80176(1), (3), (4), or (5) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.80176, or a local ordinance substantially corresponding to section 80176(1) or (3) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.80176.

(g) A violation or attempted violation of section 353 of the railroad code of 1993, 1993 PA 354, MCL 462.353.

(h) A violation or attempted violation of section 411a(1), (2), or (4) of the Michigan penal code, 1931 PA 328, MCL 750.411a.

(i) A finding of guilt for criminal contempt for a violation of a personal protection order issued under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, or for a violation of a foreign protection order that satisfies the conditions for validity provided in section 2950i of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950i.

(2) The expenses for which reimbursement may be ordered under this section include all of the following:

(a) The salaries or wages, including overtime pay, of law enforcement personnel for time spent responding to the incident from which the conviction arose, arresting the person convicted, processing the person after the arrest, preparing reports on the incident, investigating the incident, and collecting and analyzing evidence, including, but not limited to, determining bodily alcohol content and determining the presence of and identifying controlled substances in the blood, breath, or urine.

(b) The salaries, wages, or other compensation, including overtime pay, of fire department and emergency medical service personnel, including volunteer fire fighters or volunteer emergency medical service personnel, for time spent in responding to and providing fire fighting, rescue, and emergency medical services in relation to the incident from which the conviction arose.

(c) The cost of medical supplies lost or expended by fire department and emergency medical service personnel, including volunteer fire fighters or volunteer emergency medical service personnel, in providing services in relation to the incident from which the conviction arose.

(d) The salaries, wages, or other compensation, including, but not limited to, overtime pay of prosecution personnel for time spent investigating and prosecuting the crime or crimes resulting in conviction.

(e) The cost of extraditing a person from another state to this state including, but not limited to, all of the following:

(i) Transportation costs.

(ii) The salaries or wages of law enforcement and prosecution personnel, including overtime pay, for processing the extradition and returning the person to this state.

(3) If police, fire department, or emergency medical service personnel from more than 1 unit of government incurred expenses as described in subsection (2), the court may order the person convicted to reimburse each unit of government for the expenses it incurred.

(4) The amount ordered to be paid under this section shall be paid to the clerk of the court, who shall transmit the appropriate amount to the unit or units of government named in the order to receive reimbursement. If not otherwise provided by the court under this subsection, the reimbursement ordered under this section shall be made immediately. However, the court may require that the person make the reimbursement ordered under this section within a specified period or in specified installments.

(5) If the person convicted is placed on probation or paroled, any reimbursement ordered under this section shall be a condition of that probation or parole. The court may revoke probation and the parole board may revoke parole if the person fails to comply with the order and if the person has not made a good faith effort to comply with the order. In determining whether to revoke probation or parole, the court or parole board shall consider the person's employment status, earning ability, number of dependents, and financial resources, the willfulness of the person's failure to pay, and any other special circumstances that may have a bearing on the person's ability to pay.

(6) An order for reimbursement under this section may be enforced by the prosecuting attorney or the state or local unit of government named in the order to receive the reimbursement in the same manner as a judgment in a civil action.

(7) Notwithstanding any other provision of this section, a person shall not be imprisoned, jailed, or incarcerated for a violation of parole or probation, or otherwise, for failure to make a reimbursement as ordered under this section unless the court determines that the person has the resources to pay the ordered reimbursement and has not made a good faith effort to do so.

(8) A local unit of government may elect to be reimbursed for expenses under this section or a local ordinance, or a combination of this section and a local ordinance. This subsection does not allow a local unit of government to be fully reimbursed more than once for any expense incurred by that local unit of government.

(9) As part of the sentence for a conviction of any violation or attempted violation of chapter XXXIII, section 327, 327a, 328, or 436, or chapter LXXXIII-A of the Michigan penal code, 1931 PA 328, MCL 750.200 to 750.212a, 750.327, 750.327a, 750.328, and 750.436, and 750.543a to 750.543z, in addition to any other penalty authorized by law, the court shall order the person convicted to reimburse any government entity for expenses incurred in relation to that incident including, but not limited to, expenses for an emergency response and expenses for prosecuting the person, as provided in subsections (2) to (8). As used in this subsection, "government entity" means this state, a local unit of government, or the United States government.

(10) As used in this section:

(a) "Aircraft" means that term as defined in section 2 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.2.

(b) "Local unit of government" means any of the following:

(i) A city, village, township, or county.

(ii) A local or intermediate school district.

(iii) A public school academy.

(iv) A community college.

(c) "Motor vehicle" means that term as defined in section 33 of the Michigan vehicle code, 1949 PA 300, MCL 257.33.

(d) "ORV" means that term as defined in section 81101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.81101.

(e) "Snowmobile" means that term as defined in section 82101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.82101.

(f) "State" includes a state institution of higher education.

(g) "Vessel" means that term as defined in section 80104 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.80104.

History: Add. 1998, Act 345, Eff. Oct. 1, 1999;—Am. 2000, Act 372, Eff. Apr. 1, 2001;—Am. 2001, Act 208, Eff. Apr. 1, 2002;—Am. 2002, Act 120, Eff. Apr. 22, 2002;—Am. 2008, Act 466, Eff. Oct. 31, 2010;—Am. 2012, Act 331, Eff. Jan. 1, 2013.

Compiler's note: For transfer of powers and duties of Michigan parole and commutation board to Michigan parole board within department of corrections, and abolishment of Michigan parole and commutation board, see E.R.O. No. 2011-3, compiled at MCL 791.305.

MICHIGAN VEHICLE CODE (EXCERPT)
Act 300 of 1949

257.625 Operating motor vehicle while intoxicated; "operating while intoxicated" defined; operating motor vehicle when visibly impaired; penalties for causing death or serious impairment of a body function; operation of motor vehicle by person less than 21 years of age; requirements; controlled substances; costs; enhanced sentence; guilty plea or nolo contendere; establishment of prior conviction; special verdict; public record; burden of proving religious service or ceremony; ignition interlock device; definitions; prior conviction; violations arising out of same transaction.

Sec. 625. (1) A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state if the person is operating while intoxicated. As used in this section, "operating while intoxicated" means any of the following:

(a) The person is under the influence of alcoholic liquor, a controlled substance, or other intoxicating substance or a combination of alcoholic liquor, a controlled substance, or other intoxicating substance.

(b) The person has an alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, or, beginning October 1, 2018, the person has an alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(c) The person has an alcohol content of 0.17 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(2) The owner of a vehicle or a person in charge or in control of a vehicle shall not authorize or knowingly permit the vehicle to be operated upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of motor vehicles, within this state by a person if any of the following apply:

(a) The person is under the influence of alcoholic liquor, a controlled substance, other intoxicating substance, or a combination of alcoholic liquor, a controlled substance, or other intoxicating substance.

(b) The person has an alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine or, beginning October 1, 2018, the person has an alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(c) The person's ability to operate the motor vehicle is visibly impaired due to the consumption of alcoholic liquor, a controlled substance, or other intoxicating substance, or a combination of alcoholic liquor, a controlled substance, or other intoxicating substance.

(3) A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state when, due to the consumption of alcoholic liquor, a controlled substance, or other intoxicating substance, or a combination of alcoholic liquor, a controlled substance, or other intoxicating substance, the person's ability to operate the vehicle is visibly impaired. If a person is charged with violating subsection (1), a finding of guilty under this subsection may be rendered.

(4) A person, whether licensed or not, who operates a motor vehicle in violation of subsection (1), (3), or (8) and by the operation of that motor vehicle causes the death of another person is guilty of a crime as follows:

(a) Except as provided in subdivision (b), the person is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not less than \$2,500.00 or more than \$10,000.00, or both. The judgment of sentence may impose the sanction permitted under section 625n. If the vehicle is not ordered forfeited under section 625n, the court shall order vehicle immobilization under section 904d in the judgment of sentence.

(b) If, at the time of the violation, the person is operating a motor vehicle in a manner proscribed under section 653a and causes the death of a police officer, firefighter, or other emergency response personnel, the person is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not less than \$2,500.00 or more than \$10,000.00, or both. This subdivision applies regardless of whether the person is charged with the violation of section 653a. The judgment of sentence may impose the sanction permitted under section 625n. If the vehicle is not ordered forfeited under section 625n, the court shall order vehicle immobilization under section 904d in the judgment of sentence.

(5) A person, whether licensed or not, who operates a motor vehicle in violation of subsection (1), (3), or (8) and by the operation of that motor vehicle causes a serious impairment of a body function of another person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not less than \$1,000.00 or more than \$5,000.00, or both. The judgment of sentence may impose the sanction permitted

under section 625n. If the vehicle is not ordered forfeited under section 625n, the court shall order vehicle immobilization under section 904d in the judgment of sentence.

(6) A person who is less than 21 years of age, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state if the person has any bodily alcohol content. As used in this subsection, "any bodily alcohol content" means either of the following:

(a) An alcohol content of 0.02 grams or more but less than 0.08 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, or, beginning October 1, 2018, the person has an alcohol content of 0.02 grams or more but less than 0.10 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(b) Any presence of alcohol within a person's body resulting from the consumption of alcoholic liquor, other than consumption of alcoholic liquor as a part of a generally recognized religious service or ceremony.

(7) A person, whether licensed or not, is subject to the following requirements:

(a) He or she shall not operate a vehicle in violation of subsection (1), (3), (4), (5), or (8) while another person who is less than 16 years of age is occupying the vehicle. A person who violates this subdivision is guilty of a crime punishable as follows:

(i) Except as provided in subparagraph (ii), a person who violates this subdivision is guilty of a misdemeanor and shall be sentenced to pay a fine of not less than \$200.00 or more than \$1,000.00 and to 1 or more of the following:

(A) Imprisonment for not less than 5 days or more than 1 year. Not less than 48 hours of this imprisonment shall be served consecutively. This term of imprisonment shall not be suspended.

(B) Community service for not less than 30 days or more than 90 days.

(ii) If the violation occurs within 7 years of a prior conviction or after 2 or more prior convictions, regardless of the number of years that have elapsed since any prior conviction, a person who violates this subdivision is guilty of a felony and shall be sentenced to pay a fine of not less than \$500.00 or more than \$5,000.00 and to either of the following:

(A) Imprisonment under the jurisdiction of the department of corrections for not less than 1 year or more than 5 years.

(B) Probation with imprisonment in the county jail for not less than 30 days or more than 1 year and community service for not less than 60 days or more than 180 days. Not less than 48 hours of this imprisonment shall be served consecutively. This term of imprisonment shall not be suspended.

(b) He or she shall not operate a vehicle in violation of subsection (6) while another person who is less than 16 years of age is occupying the vehicle. A person who violates this subdivision is guilty of a misdemeanor punishable as follows:

(i) Except as provided in subparagraph (ii), a person who violates this subdivision may be sentenced to 1 or more of the following:

(A) Community service for not more than 60 days.

(B) A fine of not more than \$500.00.

(C) Imprisonment for not more than 93 days.

(ii) If the violation occurs within 7 years of a prior conviction or after 2 or more prior convictions, regardless of the number of years that have elapsed since any prior conviction, a person who violates this subdivision shall be sentenced to pay a fine of not less than \$200.00 or more than \$1,000.00 and to 1 or more of the following:

(A) Imprisonment for not less than 5 days or more than 1 year. Not less than 48 hours of this imprisonment shall be served consecutively. This term of imprisonment shall not be suspended.

(B) Community service for not less than 30 days or more than 90 days.

(c) In the judgment of sentence under subdivision (a)(i) or (b)(i), the court may, unless the vehicle is ordered forfeited under section 625n, order vehicle immobilization as provided in section 904d. In the judgment of sentence under subdivision (a)(ii) or (b)(ii), the court shall, unless the vehicle is ordered forfeited under section 625n, order vehicle immobilization as provided in section 904d.

(d) This subsection does not prohibit a person from being charged with, convicted of, or punished for a violation of subsection (4) or (5) that is committed by the person while violating this subsection. However, points shall not be assessed under section 320a for both a violation of subsection (4) or (5) and a violation of this subsection for conduct arising out of the same transaction.

(8) A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state if the person has in his or her body any amount of a controlled substance listed in schedule 1 under section 7212 of the public health code, 1978 PA 368, MCL 333.7212, or a rule promulgated

under that section, or of a controlled substance described in section 7214(a)(iv) of the public health code, 1978 PA 368, MCL 333.7214.

(9) If a person is convicted of violating subsection (1) or (8), all of the following apply:

(a) Except as otherwise provided in subdivisions (b) and (c), the person is guilty of a misdemeanor punishable by 1 or more of the following:

(i) Community service for not more than 360 hours.

(ii) Imprisonment for not more than 93 days, or, if the person is convicted of violating subsection (1)(c), imprisonment for not more than 180 days.

(iii) A fine of not less than \$100.00 or more than \$500.00, or, if the person is guilty of violating subsection (1)(c), a fine of not less than \$200.00 or more than \$700.00.

(b) If the violation occurs within 7 years of a prior conviction, the person shall be sentenced to pay a fine of not less than \$200.00 or more than \$1,000.00 and 1 or more of the following:

(i) Imprisonment for not less than 5 days or more than 1 year. Not less than 48 hours of the term of imprisonment imposed under this subparagraph shall be served consecutively.

(ii) Community service for not less than 30 days or more than 90 days.

(c) If the violation occurs after 2 or more prior convictions, regardless of the number of years that have elapsed since any prior conviction, the person is guilty of a felony and shall be sentenced to pay a fine of not less than \$500.00 or more than \$5,000.00 and to either of the following:

(i) Imprisonment under the jurisdiction of the department of corrections for not less than 1 year or more than 5 years.

(ii) Probation with imprisonment in the county jail for not less than 30 days or more than 1 year and community service for not less than 60 days or more than 180 days. Not less than 48 hours of the imprisonment imposed under this subparagraph shall be served consecutively.

(d) A term of imprisonment imposed under subdivision (b) or (c) shall not be suspended.

(e) In the judgment of sentence under subdivision (a), the court may order vehicle immobilization as provided in section 904d. In the judgment of sentence under subdivision (b) or (c), the court shall, unless the vehicle is ordered forfeited under section 625n, order vehicle immobilization as provided in section 904d.

(f) In the judgment of sentence under subdivision (b) or (c), the court may impose the sanction permitted under section 625n.

(10) A person who is convicted of violating subsection (2) is guilty of a crime as follows:

(a) Except as provided in subdivisions (b) and (c), a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not less than \$100.00 or more than \$500.00, or both.

(b) If the person operating the motor vehicle violated subsection (4), a felony punishable by imprisonment for not more than 5 years or a fine of not less than \$1,500.00 or more than \$10,000.00, or both.

(c) If the person operating the motor vehicle violated subsection (5), a felony punishable by imprisonment for not more than 2 years or a fine of not less than \$1,000.00 or more than \$5,000.00, or both.

(11) If a person is convicted of violating subsection (3), all of the following apply:

(a) Except as otherwise provided in subdivisions (b) and (c), the person is guilty of a misdemeanor punishable by 1 or more of the following:

(i) Community service for not more than 360 hours.

(ii) Imprisonment for not more than 93 days.

(iii) A fine of not more than \$300.00.

(b) If the violation occurs within 7 years of 1 prior conviction, the person shall be sentenced to pay a fine of not less than \$200.00 or more than \$1,000.00, and 1 or more of the following:

(i) Imprisonment for not less than 5 days or more than 1 year. Not less than 48 hours of the term of imprisonment imposed under this subparagraph shall be served consecutively.

(ii) Community service for not less than 30 days or more than 90 days.

(c) If the violation occurs after 2 or more prior convictions, regardless of the number of years that have elapsed since any prior conviction, the person is guilty of a felony and shall be sentenced to pay a fine of not less than \$500.00 or more than \$5,000.00 and either of the following:

(i) Imprisonment under the jurisdiction of the department of corrections for not less than 1 year or more than 5 years.

(ii) Probation with imprisonment in the county jail for not less than 30 days or more than 1 year and community service for not less than 60 days or more than 180 days. Not less than 48 hours of the imprisonment imposed under this subparagraph shall be served consecutively.

(d) A term of imprisonment imposed under subdivision (b) or (c) shall not be suspended.

(e) In the judgment of sentence under subdivision (a), the court may order vehicle immobilization as provided in section 904d. In the judgment of sentence under subdivision (b) or (c), the court shall, unless the

vehicle is ordered forfeited under section 625n, order vehicle immobilization as provided in section 904d.

(f) In the judgment of sentence under subdivision (b) or (c), the court may impose the sanction permitted under section 625n.

(12) If a person is convicted of violating subsection (6), all of the following apply:

(a) Except as otherwise provided in subdivision (b), the person is guilty of a misdemeanor punishable by 1 or both of the following:

(i) Community service for not more than 360 hours.

(ii) A fine of not more than \$250.00.

(b) If the violation occurs within 7 years of 1 or more prior convictions, the person may be sentenced to 1 or more of the following:

(i) Community service for not more than 60 days.

(ii) A fine of not more than \$500.00.

(iii) Imprisonment for not more than 93 days.

(13) In addition to imposing the sanctions prescribed under this section, the court may order the person to pay the costs of the prosecution under the code of criminal procedure, 1927 PA 175, MCL 760.1 to 777.69.

(14) A person sentenced to perform community service under this section shall not receive compensation and shall reimburse the state or appropriate local unit of government for the cost of supervision incurred by the state or local unit of government as a result of the person's activities in that service.

(15) If the prosecuting attorney intends to seek an enhanced sentence under this section or a sanction under section 625n based upon the defendant having 1 or more prior convictions, the prosecuting attorney shall include on the complaint and information, or an amended complaint and information, filed in district court, circuit court, municipal court, or family division of circuit court, a statement listing the defendant's prior convictions.

(16) If a person is charged with a violation of subsection (1), (3), (4), (5), (7), or (8) or section 625m, the court shall not permit the defendant to enter a plea of guilty or nolo contendere to a charge of violating subsection (6) in exchange for dismissal of the original charge. This subsection does not prohibit the court from dismissing the charge upon the prosecuting attorney's motion.

(17) A prior conviction shall be established at sentencing by 1 or more of the following:

(a) A copy of a judgment of conviction.

(b) An abstract of conviction.

(c) A transcript of a prior trial or a plea-taking or sentencing proceeding.

(d) A copy of a court register of actions.

(e) A copy of the defendant's driving record.

(f) Information contained in a presentence report.

(g) An admission by the defendant.

(18) Except as otherwise provided in subsection (20), if a person is charged with operating a vehicle while under the influence of a controlled substance or other intoxicating substance or a combination of alcoholic liquor, a controlled substance, or other intoxicating substance in violation of subsection (1) or a local ordinance substantially corresponding to subsection (1), the court shall require the jury to return a special verdict in the form of a written finding or, if the court convicts the person without a jury or accepts a plea of guilty or nolo contendere, the court shall make a finding as to whether the person was under the influence of a controlled substance or other intoxicating substance or a combination of alcoholic liquor, a controlled substance, or other intoxicating substance at the time of the violation.

(19) Except as otherwise provided in subsection (20), if a person is charged with operating a vehicle while his or her ability to operate the vehicle was visibly impaired due to his or her consumption of a controlled substance or other intoxicating substance or a combination of alcoholic liquor, a controlled substance, or other intoxicating substance in violation of subsection (3) or a local ordinance substantially corresponding to subsection (3), the court shall require the jury to return a special verdict in the form of a written finding or, if the court convicts the person without a jury or accepts a plea of guilty or nolo contendere, the court shall make a finding as to whether, due to the consumption of a controlled substance or a combination of alcoholic liquor, a controlled substance, or other intoxicating substance, the person's ability to operate a motor vehicle was visibly impaired at the time of the violation.

(20) A special verdict described in subsections (18) and (19) is not required if a jury is instructed to make a finding solely as to either of the following:

(a) Whether the defendant was under the influence of a controlled substance or a combination of alcoholic liquor, a controlled substance, or other intoxicating substance at the time of the violation.

(b) Whether the defendant was visibly impaired due to his or her consumption of a controlled substance or a combination of alcoholic liquor, a controlled substance, or other intoxicating substance at the time of the

violation.

(21) If a jury or court finds under subsection (18), (19), or (20) that the defendant operated a motor vehicle under the influence of or while impaired due to the consumption of a controlled substance or a combination of a controlled substance, an alcoholic liquor, or other intoxicating substance, the court shall do both of the following:

(a) Report the finding to the secretary of state.

(b) On a form or forms prescribed by the state court administrator, forward to the department of state police a record that specifies the penalties imposed by the court, including any term of imprisonment, and any sanction imposed under section 625n or 904d.

(22) Except as otherwise provided by law, a record described in subsection (21)(b) is a public record and the department of state police shall retain the information contained on that record for not less than 7 years.

(23) In a prosecution for a violation of subsection (6), the defendant bears the burden of proving that the consumption of alcoholic liquor was a part of a generally recognized religious service or ceremony by a preponderance of the evidence.

(24) The court may order as a condition of probation that a person convicted of violating subsection (1) or (8), or a local ordinance substantially corresponding to subsection (1) or (8), shall not operate a motor vehicle unless that vehicle is equipped with an ignition interlock device approved, certified, and installed as required under sections 625k and 625l.

(25) As used in this section:

(a) "Intoxicating substance" means any substance, preparation, or a combination of substances and preparations other than alcohol or a controlled substance, that is either of the following:

(i) Recognized as a drug in any of the following publications or their supplements:

(A) The official United States pharmacopoeia.

(B) The official homeopathic pharmacopoeia of the United States.

(C) The official national formulary.

(ii) A substance, other than food, taken into a person's body, including, but not limited to, vapors or fumes, that is used in a manner or for a purpose for which it was not intended, and that may result in a condition of intoxication.

(b) "Prior conviction" means a conviction for any of the following, whether under a law of this state, a local ordinance substantially corresponding to a law of this state, a law of the United States substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state, subject to subsection (27):

(i) Except as provided in subsection (26), a violation or attempted violation of any of the following:

(A) This section, except a violation of subsection (2), or a violation of any prior enactment of this section in which the defendant operated a vehicle while under the influence of intoxicating or alcoholic liquor or a controlled substance, or a combination of intoxicating or alcoholic liquor and a controlled substance, or while visibly impaired, or with an unlawful bodily alcohol content.

(B) Section 625m.

(C) Former section 625b.

(ii) Negligent homicide, manslaughter, or murder resulting from the operation of a vehicle or an attempt to commit any of those crimes.

(iii) Section 601d or 626(3) or (4).

(26) Except for purposes of the enhancement described in subsection (12)(b), only 1 violation or attempted violation of subsection (6), a local ordinance substantially corresponding to subsection (6), or a law of another state substantially corresponding to subsection (6) may be used as a prior conviction.

(27) If 2 or more convictions described in subsection (25) are convictions for violations arising out of the same transaction, only 1 conviction shall be used to determine whether the person has a prior conviction.

History: 1949, Act 300, Eff. Sept. 23, 1949;—Am. 1951, Act 270, Eff. Sept. 28, 1951;—Am. 1954, Act 10, Eff. Aug. 13, 1954;—Am. 1956, Act 34, Eff. Aug. 11, 1956;—Am. 1958, Act 113, Eff. Sept. 13, 1958;—Am. 1976, Act 285, Eff. Apr. 1, 1977;—Am. 1978, Act 57, Imd. Eff. Mar. 10, 1978;—Am. 1978, Act 391, Eff. Jan. 15, 1979;—Am. 1980, Act 515, Eff. Apr. 1, 1981;—Am. 1982, Act 309, Eff. Mar. 30, 1983;—Am. 1987, Act 109, Eff. Mar. 30, 1988;—Am. 1991, Act 98, Eff. Jan. 1, 1992;—Am. 1993, Act 359, Eff. Sept. 1, 1994;—Am. 1994, Act 211, Eff. Nov. 1, 1994;—Am. 1994, Act 448, Eff. May 1, 1995;—Am. 1994, Act 449, Eff. May 1, 1995;—Am. 1996, Act 491, Eff. Apr. 1, 1997;—Am. 1998, Act 350, Eff. Oct. 1, 1999;—Am. 1999, Act 73, Eff. Oct. 1, 1999;—Am. 2000, Act 77, Eff. Oct. 1, 2000;—Am. 2000, Act 460, Eff. Mar. 28, 2001;—Am. 2003, Act 61, Eff. Sept. 30, 2003;—Am. 2004, Act 62, Eff. May 3, 2004;—Am. 2006, Act 564, Imd. Eff. Jan. 3, 2007;—Am. 2008, Act 341, Eff. Jan. 1, 2009;—Am. 2008, Act 462, Eff. Oct. 31, 2010;—Am. 2008, Act 463, Eff. Oct. 31, 2010;—Am. 2012, Act 543, Eff. Mar. 31, 2013;—Am. 2013, Act 23, Imd. Eff. May 9, 2013.

Compiler's note: Section 2 of Act 309 of 1982 provides: "All proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this amendatory act takes effect are saved and may be consummated according to the law in force when they are

commenced. This amendatory act shall not be construed to affect any prosecution pending or initiated before the effective date of this amendatory act, or initiated after the effective date of this amendatory act for an offense committed before that effective date."

Popular name: Heidi's Law

THE MICHIGAN PENAL CODE (EXCERPT)
Act 328 of 1931

750.145d Use of internet or computer system; prohibited conduct; violation; penalty; jurisdiction; order to reimburse state or local governmental unit; definitions.

Sec. 145d. (1) A person shall not use the internet or a computer, computer program, computer network, or computer system to communicate with any person for the purpose of doing any of the following:

(a) Committing, attempting to commit, conspiring to commit, or soliciting another person to commit conduct proscribed under section 145a, 145c, 157c, 349, 350, 520b, 520c, 520d, 520e, or 520g, or section 5 of 1978 PA 33, MCL 722.675, in which the victim or intended victim is a minor or is believed by that person to be a minor.

(b) Committing, attempting to commit, conspiring to commit, or soliciting another person to commit conduct proscribed under section 411h or 411i.

(c) Committing, attempting to commit, conspiring to commit, or soliciting another person to commit conduct proscribed under chapter XXXIII or section 327, 327a, 328, or 411a(2).

(2) A person who violates this section is guilty of a crime as follows:

(a) If the underlying crime is a misdemeanor or a felony with a maximum term of imprisonment of less than 1 year, the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$5,000.00, or both.

(b) If the underlying crime is a misdemeanor or a felony with a maximum term of imprisonment of 1 year or more but less than 2 years, the person is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$5,000.00, or both.

(c) If the underlying crime is a misdemeanor or a felony with a maximum term of imprisonment of 2 years or more but less than 4 years, the person is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$5,000.00, or both.

(d) If the underlying crime is a felony with a maximum term of imprisonment of 4 years or more but less than 10 years, the person is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$5,000.00, or both.

(e) If the underlying crime is a felony punishable by a maximum term of imprisonment of 10 years or more but less than 15 years, the person is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$10,000.00, or both.

(f) If the underlying crime is a felony punishable by a maximum term of imprisonment of 15 years or more or for life, the person is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not more than \$20,000.00, or both.

(3) The court may order that a term of imprisonment imposed under this section be served consecutively to any term of imprisonment imposed for conviction of the underlying offense.

(4) This section does not prohibit a person from being charged with, convicted of, or punished for any other violation of law committed by that person while violating or attempting to violate this section, including the underlying offense.

(5) This section applies regardless of whether the person is convicted of committing, attempting to commit, conspiring to commit, or soliciting another person to commit the underlying offense.

(6) A violation or attempted violation of this section occurs if the communication originates in this state, is intended to terminate in this state, or is intended to terminate with a person who is in this state.

(7) A violation or attempted violation of this section may be prosecuted in any jurisdiction in which the communication originated or terminated.

(8) The court may order a person convicted of violating this section to reimburse this state or a local unit of government of this state for expenses incurred in relation to the violation in the same manner that expenses may be ordered to be reimbursed under section 1f of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1f.

(9) As used in this section:

(a) "Computer" means any connected, directly interoperable or interactive device, equipment, or facility that uses a computer program or other instructions to perform specific operations including logical, arithmetic, or memory functions with or on computer data or a computer program and that can store, retrieve, alter, or communicate the results of the operations to a person, computer program, computer, computer system, or computer network. Computer includes a computer game device or a cellular telephone, personal digital assistant (PDA), or other handheld device.

(b) "Computer network" means the interconnection of hardware or wireless communication lines with a computer through remote terminals, or a complex consisting of 2 or more interconnected computers.

(c) "Computer program" means a series of internal or external instructions communicated in a form acceptable to a computer that directs the functioning of a computer, computer system, or computer network in a manner designed to provide or produce products or results from the computer, computer system, or computer network.

(d) "Computer system" means a set of related, connected or unconnected, computer equipment, devices, software, or hardware.

(e) "Device" includes, but is not limited to, an electronic, magnetic, electrochemical, biochemical, hydraulic, optical, or organic object that performs input, output, or storage functions by the manipulation of electronic, magnetic, or other impulses.

(f) "Internet" means that term as defined in section 230 of the communications act of 1934, 47 USC 230.

(g) "Minor" means an individual who is less than 18 years of age.

History: Add. 1999, Act 32, Eff. Aug. 1, 1999;—Am. 1999, Act 235, Eff. Mar. 10, 2000;—Am. 2000, Act 185, Eff. Sept. 18, 2000;—Am. 2012, Act 353, Eff. Jan. 1, 2013.

THE MICHIGAN PENAL CODE (EXCERPT)
Act 328 of 1931

750.356c Retail fraud in first degree.

Sec. 356c. (1) A person who does any of the following in a store or in its immediate vicinity is guilty of retail fraud in the first degree, a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$10,000.00 or 3 times the value of the difference in price, property stolen, or money or property obtained or attempted to be obtained, whichever is greater, or both imprisonment and a fine:

(a) While a store is open to the public, alters, transfers, removes and replaces, conceals, or otherwise misrepresents the price at which property is offered for sale, with the intent not to pay for the property or to pay less than the price at which the property is offered for sale, if the resulting difference in price is \$1,000.00 or more.

(b) While a store is open to the public, steals property of the store that is offered for sale at a price of \$1,000.00 or more.

(c) With intent to defraud, obtains or attempts to obtain money or property from the store as a refund or exchange for property that was not paid for and belongs to the store, if the amount of money or the value of the property obtained or attempted to be obtained is \$1,000.00 or more.

(2) A person who violates section 356d(1) and who has 1 or more prior convictions for committing or attempting to commit an offense under this section or section 218, 356, 356d(1), or 360 is guilty of retail fraud in the first degree. For purposes of this subsection, however, a prior conviction does not include a conviction for a violation or attempted violation of section 218(2) or (3)(b) or section 356(4)(b) or (5).

(3) The values of the difference in price, property stolen, or money or property obtained or attempted to be obtained in separate incidents pursuant to a scheme or course of conduct within any 12-month period may be aggregated to determine the total value involved in the offense under this section.

(4) If the prosecuting attorney intends to seek an enhanced sentence based upon the defendant having 1 or more prior convictions, the prosecuting attorney shall include on the complaint and information a statement listing the prior conviction or convictions. The existence of the defendant's prior conviction or convictions shall be determined by the court, without a jury, at sentencing or at a separate hearing for that purpose before sentencing. The existence of a prior conviction may be established by any evidence relevant for that purpose, including, but not limited to, 1 or more of the following:

(a) A copy of the judgment of conviction.

(b) A transcript of a prior trial, plea-taking, or sentencing.

(c) Information contained in a presentence report.

(d) The defendant's statement.

(5) A person who commits retail fraud in the first degree shall not be prosecuted under section 218(5) or 356(2).

(6) If the sentence for a conviction under this section is enhanced by 1 or more prior convictions, those prior convictions shall not be used to further enhance the sentence for the conviction pursuant to section 10, 11, or 12 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.

History: Add. 1988, Act 20, Eff. June 1, 1988;—Am. 1998, Act 311, Eff. Jan. 1, 1999.

THE MICHIGAN PENAL CODE (EXCERPT)
Act 328 of 1931

750.356d Retail fraud in second or third degree.

Sec. 356d. (1) A person who does any of the following in a store or in its immediate vicinity is guilty of retail fraud in the second degree, a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$2,000.00 or 3 times the value of the difference in price, property stolen, or money or property obtained or attempted to be obtained, whichever is greater, or both imprisonment and a fine:

(a) While a store is open to the public, alters, transfers, removes and replaces, conceals, or otherwise misrepresents the price at which property is offered for sale with the intent not to pay for the property or to pay less than the price at which the property is offered for sale if the resulting difference in price is \$200.00 or more but less than \$1,000.00.

(b) While a store is open to the public, steals property of the store that is offered for sale at a price of \$200.00 or more but less than \$1,000.00.

(c) With intent to defraud, obtains or attempts to obtain money or property from the store as a refund or exchange for property that was not paid for and belongs to the store if the amount of money or the value of the property obtained or attempted to be obtained is \$200.00 or more but less than \$1,000.00.

(2) A person who violates subsection (4) and who has 1 or more prior convictions for committing or attempting to commit an offense under this section, section 218, 356, 356c, or 360, or a local ordinance substantially corresponding to this section or section 218, 356, 356c, or 360 is guilty of retail fraud in the second degree.

(3) A person who commits retail fraud in the second degree shall not be prosecuted under section 360.

(4) A person who does any of the following in a store or in its immediate vicinity is guilty of retail fraud in the third degree, a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00 or 3 times the value of the difference in price, property stolen, or money or property obtained or attempted to be obtained, whichever is greater, or both imprisonment and a fine:

(a) While a store is open to the public, alters, transfers, removes and replaces, conceals, or otherwise misrepresents the price at which property is offered for sale, with the intent not to pay for the property or to pay less than the price at which the property is offered for sale, if the resulting difference in price is less than \$200.00.

(b) While a store is open to the public, steals property of the store that is offered for sale at a price of less than \$200.00.

(c) With intent to defraud, obtains or attempts to obtain money or property from the store as a refund or exchange for property that was not paid for and belongs to the store, if the amount of money, or the value of the property, obtained or attempted to be obtained is less than \$200.00.

(5) A person who commits retail fraud in the third degree shall not be prosecuted under section 360.

(6) The values of the difference in price, property stolen, or money or property obtained or attempted to be obtained in separate incidents pursuant to a scheme or course of conduct within any 12-month period may be aggregated to determine the total value involved in the offense under this section.

(7) If the prosecuting attorney intends to seek an enhanced sentence based upon the defendant having 1 or more prior convictions, the prosecuting attorney shall include on the complaint and information a statement listing the prior conviction or convictions. The existence of the defendant's prior conviction or convictions shall be determined by the court, without a jury, at sentencing or at a separate hearing for that purpose before sentencing. The existence of a prior conviction may be established by any evidence relevant for that purpose, including, but not limited to, 1 or more of the following:

- (a) A copy of the judgment of conviction.
- (b) A transcript of a prior trial, plea-taking, or sentencing.
- (c) Information contained in a presentence report.
- (d) The defendant's statement.

History: Add. 1988, Act 20, Eff. June 1, 1988;—Am. 1998, Act 311, Eff. Jan. 1, 1999.

REVISED JUDICATURE ACT OF 1961 (EXCERPT)

Act 236 of 1961

600.2953 Retail fraud; liability; civil damages; demand for payment; text; noncompliance; effect of payment; jurisdiction; civil action against parent; formal police report; violation by merchant precluding recovery.

Sec. 2953. (1) In addition to applicable penal sanctions, a person who commits an act for which he or she could be charged with retail fraud in the first, second, or third degree under sections 356c and 356d of the Michigan penal code, 1931 PA 328, MCL 750.356c and 750.356d, is liable to the merchant who is the victim of the act for the full retail price of unrecovered property or recovered property that is not in salable condition, and civil damages of 10 times the retail price of the property, but not less than \$50.00 and not more than \$200.00.

(2) The merchant who is the victim of retail fraud in the first, second, or third degree, or an agent of the merchant, may make a written demand for payment of the amount for which the person who committed the act is liable under subsection (1). Except for a sole proprietorship, a member of management, other than the initial detaining person, shall evaluate the validity of the accusation that the person committed the act and shall approve the accusation in writing before a written demand for payment is issued. The demand for payment may be delivered to the person from whom payment is demanded by first-class mail. The text of the written demand shall be as follows:

"We have cause to believe that on (date) you, or your minor child (child's name), committed retail fraud in the first, second, or third degree by (description of action and property involved) in our store or in its immediate vicinity.

State law authorizes us to demand in writing that you do all of the following, as applicable:

☐ Return the property in salable condition or pay to us \$ _____, which represents the full retail price or the remaining balance of the full retail price of the property.

☐ Pay to us \$ _____, which represents the full retail price of the recovered property that is not in salable condition.

☐ Pay to us civil damages in an amount equal to 10 times the retail price of the property involved, but not less than \$50.00 or more than \$200.00, equaling a total amount of \$ _____.

This notice is a formal demand for return of the property involved, if applicable, and the payment of the amounts indicated above, equaling a total amount of \$ _____. If you return any unrecovered property and pay the amounts indicated above to us within 30 days after the date this notice was mailed, we will not take any further civil action against you.

You are not required to respond to this demand if you believe that you or your minor child are not guilty of committing retail fraud or if you choose not to respond. If you fail to comply with this demand, we will be authorized by state law to bring a civil action against you to determine your legal responsibility for the return of any unrecovered property and the payment of the amounts indicated above plus the cost of the action, including reasonable attorney fees.

These civil proceedings do not prevent criminal prosecution for the alleged act of retail fraud."

(3) If the person to whom a written demand is made under subsection (2) complies with the written demand within 30 days after the date the written demand is mailed, that person shall incur no further civil liability to the merchant from the act of retail fraud.

(4) A person who commits an act described in subsection (1) and who fails to comply with a written demand under subsection (2) is liable to the merchant for the full retail price of the property, unless the property was recovered in salable condition, plus civil damages of 10 times the retail price of the property but not less than \$50.00 or more than \$200.00, and costs of the action, including reasonable attorney fees.

(5) If a civil action is filed pursuant to this section and before the trial of the action is commenced the person to whom a written demand was made under subsection (2) pays the merchant in cash the amount demanded, subsection (4) does not apply.

(6) An action under this section may be brought in the small claims division of the district court or in any other court of competent jurisdiction. If the amount demanded exceeds the jurisdiction of the small claims division, the action may still be brought in the small claims division, but the amount recovered shall not exceed the jurisdiction of the small claims division.

(7) A merchant may recover damages in an amount allowable under this section in a civil action in a court of competent jurisdiction against the parent or parents of an unemancipated minor who lives with his or her parent or parents and who commits an act described in subsection (1).

(8) A merchant may recover the amount for which a person is civilly liable under this section only if a formal police report is filed with a local law enforcement agency that has jurisdiction over the location where

the violation took place, which report sets forth facts alleging that the person has committed retail fraud in the first, second, or third degree or violated a local ordinance substantially corresponding to section 218, 356, 356c, or 356d of the Michigan penal code, 1931 PA 328, MCL 750.218, 750.356, 750.356c, and 750.356d, regardless of the outcome of any criminal action.

(9) Notwithstanding any other provision of this section, a merchant shall not recover civil damages for an act of retail fraud in the first, second, or third degree with regard to a particular item of property if the merchant violated section 3 of 1976 PA 449, MCL 445.353, with regard to that item of property and the violation was not caused by the person who committed the act of retail fraud.

History: Add. 1988, Act 50, Eff. June 1, 1988;—Am. 1998, Act 313, Eff. Jan. 1, 1999.

ORGANIZED RETAIL CRIME ACT (EXCERPT)
Act 455 of 2012

752.1081 Short title.

Sec. 1. This act shall be known and may be cited as the "organized retail crime act".

History: 2012, Act 455, Eff. Mar. 31, 2013.

ORGANIZED RETAIL CRIME ACT (EXCERPT)
Act 455 of 2012

752.1082 Legislative intent.

Sec. 2. It is the intent of the legislature to protect the public health, safety, and welfare of the citizens of the state by recognizing the negative impact of persons who engage in planned, organized, and methodical theft of retail merchandise for resale in unregulated retail commerce, including, but not limited to, medications, infant formula, and pharmaceutical items; the potential use of the proceeds of the sale of that merchandise to support other crimes and criminal enterprises and the nature, extent, and impact of those activities upon commerce and public safety; and to take appropriate actions to prevent and punish those who engage in those activities.

History: 2012, Act 455, Eff. Mar. 31, 2013.

ORGANIZED RETAIL CRIME ACT (EXCERPT)
Act 455 of 2012

752.1083 Definitions.

Sec. 3. As used in this act:

- (a) "Board" means the organized retail crime advisory board created under section 6.
- (b) "Department" means the department of state police.
- (c) "Organized retail crime" means the theft of retail merchandise from a retail merchant with the intent or purpose of reselling, distributing, or otherwise reentering the retail merchandise in commerce, including the transfer of the stolen retail merchandise to another retail merchant or to any other person personally, through the mail, or through any electronic medium, including the internet, in exchange for anything of value.
- (d) "Person" means an individual, sole proprietorship, partnership, cooperative, association, corporation, limited liability company, personal representative, receiver, trustee, assignee, or other entity.
- (e) "Retail merchant" means any person that is in the business of selling retail merchandise at retail.
- (f) "Retail merchandise" means any new article, product, commodity, item, or component intended to be sold in retail commerce.

History: 2012, Act 455, Eff. Mar. 31, 2013.

ORGANIZED RETAIL CRIME ACT (EXCERPT)
Act 455 of 2012

752.1084 Prohibited conduct; violation as felony; penalty; forfeiture; restitution; reimbursement; representation that property stolen, embezzled, or converted.

Sec. 4. (1) A person is guilty of organized retail crime when that person, alone or in association with another person, does any of the following:

- (a) Knowingly commits an organized retail crime.
- (b) Organizes, supervises, finances, or otherwise manages or assists another person in committing an organized retail crime.
- (c) Removes, destroys, deactivates, or knowingly evades any component of an antishoplifting or inventory control device to prevent the activation of that device or to facilitate another person in committing an organized retail crime.
- (d) Conspires with another person to commit an organized retail crime.
- (e) Receives, purchases, or possesses retail merchandise for sale or resale knowing or believing the retail merchandise to be stolen from a retail merchant.
- (f) Uses any artifice, instrument, container, device, or other article to facilitate the commission of an organized retail crime act.
- (g) Knowingly causes a fire exit alarm to sound or otherwise activate, or deactivates or prevents a fire exit alarm from sounding, in the commission of an organized retail crime or to facilitate the commission of an organized retail crime by another person.
- (h) Knowingly purchases a wireless telecommunication device using fraudulent credit, knowingly procures a wireless telecommunications service agreement with the intent to defraud another person or to breach that agreement, or uses another person to obtain a wireless telecommunications service agreement with the intent to defraud another person or to breach that agreement.

(2) Organized retail crime is a felony punishable by imprisonment for not more than 5 years or a fine of \$5,000.00, or both.

(3) If the true owner of stolen retail merchandise cannot be identified, the retail merchandise, and any proceeds from the sale or resale of that merchandise, is subject to forfeiture to the state for use by the board in the performance of its duties. The court shall order forfeiture of the retail merchandise in the manner and upon terms and conditions as determined by the court to be appropriate.

(4) The court shall order a person who is found guilty of organized retail crime to make restitution to any retail merchant victim in the manner provided in the crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, and to reimburse the governmental entity for its expenses incurred as a result of the violation of this act in the manner provided in section 1f of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1f.

(5) It is not a defense to a charge under this section that the property was not stolen, embezzled, or converted property at the time of the violation if the property was explicitly represented to the accused person as being stolen, embezzled, or converted property.

History: 2012, Act 455, Eff. Mar. 31, 2013.

ORGANIZED RETAIL CRIME ACT (EXCERPT)
Act 455 of 2012

752.1086 Organized retail crime advisory board.

Sec. 6. (1) There is created within the department of state police an organized retail crime advisory board. The board shall consist of the following members:

- (a) One member who is a county prosecuting attorney or an assistant county prosecuting attorney.
 - (b) One member who is a representative of a city, village, or township police department or of a county sheriff department.
 - (c) The state attorney general or his or her designated representative.
 - (d) One member who is recommended by the Michigan retailers association.
 - (e) One member who is a member of the general public.
 - (f) The director of the department of state police or his or her designated representative.
- (2) All members of the board, other than the attorney general and the director of the department of state police, shall be appointed by the governor by and with the advice and consent of the senate for terms of 4 years.
- (3) A vacancy on the board shall be filled in the same manner as the original appointment for the remainder of any unexpired term.
- (4) The duties of the board shall be to develop a database of organized retail crimes, to compile annual statistics on organized retail crime acts, to recommend actions to be taken by the department and law enforcement to further combat organized retail crime, and to submit an annual report to the director of the department on the effectiveness of this act in reducing organized retail crime.
- (5) The director of the department of state police or his or her designee shall serve as chairperson of the board. The board shall meet not less often than 4 times each year. Special meetings may be called by the chairperson, or upon written request of not fewer than 3 board members. Meetings shall be held at a location designated by the chairperson.
- (6) The board shall keep minutes of its proceedings. A record of board action and business shall be made and maintained.
- (7) The board members shall not be compensated for their service but may be reimbursed for their actual and reasonable expenses.
- (8) The board shall not retain a staff.
- (9) The business performed by the board shall be conducted at a public meeting of the board held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.
- (10) A writing prepared, owned, used, in the possession of, or retained by the board in the performance of an official function shall be made available to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

History: 2012, Act 455, Eff. Mar. 31, 2013.



Florida Statutes 938.27 - Judgment for costs on conviction

Florida Statutes > Title XLVII > Chapter 938 > Part IV > § 938.27. Judgment for costs on conviction

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2010 version

(1) In all criminal and violation-of-probation or community-control cases, convicted persons are liable for payment of the costs of prosecution, including investigative costs incurred by law enforcement agencies, by fire departments for arson investigations, and by investigations of the Department of Financial Services or the Office of Financial Regulation of the Financial Services Commission, if requested by such agencies. The court shall include these costs in every judgment rendered against the convicted person. For purposes of this section, "convicted" means a determination of guilt, or of violation of probation or community control, which is a result of a plea, trial, or violation proceeding, regardless of whether adjudication is withheld.

(2)(a) The court shall impose the costs of prosecution and investigation notwithstanding the defendant's present ability to pay. The court shall require the defendant to pay the costs within a specified period or in specified installments.

(b) The end of such period or the last such installment shall not be later than:

1. The end of the period of probation or community control, if probation or community control is ordered;
2. Five years after the end of the term of imprisonment imposed, if the court does not order probation or community control; or
3. Five years after the date of sentencing in any other case.

However, in no event shall the obligation to pay any unpaid amounts expire if not paid in full within the period specified in this paragraph.

(c) If not otherwise provided by the court under this section, costs shall be paid immediately.

(3) If a defendant is placed on probation or community control, payment of any costs under this section shall be a condition of such probation or community control. The court may revoke probation or community control if the defendant fails to pay these costs.

(4) Any dispute as to the proper amount or type of costs shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of costs incurred is on the state attorney. The burden of demonstrating the financial resources of the defendant and the financial needs of the defendant is on the defendant. The burden of demonstrating such other matters as the court deems appropriate is upon the party designated by the court as justice requires.

(5) Any default in payment of costs may be collected by any means authorized by law for enforcement of a judgment.

(6) The clerk of the court shall collect and dispense cost payments in any case.

(7) Investigative costs that are recovered shall be returned to the appropriate investigative agency that incurred the expense. Such costs include actual expenses incurred in conducting the investigation and prosecution of the criminal case; however, costs may also include the salaries of permanent employees. Any investigative costs recovered on behalf

of a state agency must be remitted to the Department of Revenue for deposit in the agency operating trust fund, and a report of the payment must be sent to the agency, except that any investigative costs recovered on behalf of the Department of Law Enforcement shall be deposited in the department's Forfeiture and Investigative Support Trust Fund under s. 943.362.

(8) Costs for the state attorney shall be set in all cases at no less than \$50 per case when a misdemeanor or criminal traffic offense is charged and no less than \$100 per case when a felony offense is charged, including a proceeding in which the underlying offense is a violation of probation or community control. The court may set a higher amount upon a showing of sufficient proof of higher costs incurred. Costs recovered on behalf of the state attorney under this section shall be deposited into the State Attorneys Revenue Trust Fund to be used during the fiscal year in which the funds are collected, or in any subsequent fiscal year, for actual expenses incurred in investigating and prosecuting criminal cases, which may include the salaries of permanent employees, or for any other purpose authorized by the Legislature.

s. 1, ch. 76, 1846; RS 2983; GS 4057; RGS 6161; CGL 8475

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CHAPTER 939 COSTS

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- 939.17 Application of cash deposit to fine and costs.
- 939.185 Assessment of additional court costs and surcharges.

939.02 Costs before committing trial court judge.—All costs accruing before a committing trial court judge shall be taxed against the defendant on conviction or estreat of recognizance.

History.—s. 3, ch. 1949, 1873; RS 2984; GS 4058; RGS 6162; CGL 8476; s. 42, ch. 2004-11.

939.03 Execution for costs in capital cases.—In all capital cases the costs in case of conviction shall be entered up against the prisoner, and the bill of costs, when taxed by the clerk and certified in the manner required by law to give a bill of costs the force of an execution, shall have the force of an execution, and may be levied upon any property of the prisoner found in the state. If the sheriff shall return said bill to the office of the clerk and make affidavit thereon that sufficient property cannot be found to pay the same, and shall state in the affidavit the amount left unpaid after exhausting all the property found, the bill, or the balance unpaid thereon, shall then be audited according to law and such amount shall be paid out of the county treasury.

History.—s. 7, ch. 159, 1848; RS 2985; GS 4059; RGS 6163; CGL 8477.

939.04 Execution for costs in other cases.—In all cases less than capital, wherein the defendant may be adjudged to pay costs, a capias may be issued, as is provided for the collection of fines and forfeitures.

History.—s. 5, ch. 217, 1849; RS 2986; GS 4060; RGS 6164; CGL 8478.

939.06 Acquitted defendant not liable for costs.—

(1) A defendant in a criminal prosecution who is acquitted or discharged is not liable for any costs or fees of the court or any ministerial office, or for any charge of subsistence while detained in custody. If the defendant has paid any taxable costs, or fees required under s. 27.52(1)(b), in the case, the clerk or judge shall give him or her a certificate of the payment of such costs, with the items thereof, which, when audited and approved according to law, shall be refunded to the defendant.

(2) To receive a refund under this section, a defendant must submit a request for the refund to the Justice Administrative Commission on a form and in a manner prescribed by the commission. The defendant must attach to the form an order from the court demonstrating the defendant's right to the refund and the amount of the refund.

History.—s. 3, ch. 76, 1846; RS 2988; GS 4062; RGS 6166; CGL 8480; s. 44, ch. 73-334; s. 1590, ch. 97-102; s. 131, ch. 2003-402; s. 62, ch. 2005-236.

939.08 Costs to be certified before audit.—In all cases wherein is claimed the payment of applicable bills of costs, fees, or expenses of the state courts system as provided in s. 29.004, other than juror and witness fees, in the adjudication of any case payable by the state, the trial court administrator or the administrator's designee shall review the itemized bill. The bill shall not be paid until the trial court administrator or the administrator's designee has approved it and certified that it is just, correct, and reasonable and contains no unnecessary or illegal item.

History.—ss. 3, 5, ch. 3702, 1887; RS 2989; GS 4064; RGS 6168; CGL 8482; s. 44, ch. 73-334; s. 132, ch. 2003-402; s. 34, ch. 2010-162.

939.09 Sheriff's mileage.—Every sheriff, in presenting a bill for mileage against the state or county, shall certify that no constructive mileage is charged therein.

History.—s. 7, ch. 3702, 1887; RS 2990; GS 4065; RGS 6169; CGL 8483.

939.11 Unnecessary charge for confining prisoner not to be allowed.—No charge for rent of any house for confining a prisoner, or for guarding a prisoner, any longer than may be necessary for transferring such prisoner to jail or place of safekeeping, or during the session of court at which such prisoner shall be arraigned, or to which he or she may be brought for trial, shall be allowed against the state or county.

History.—s. 6, ch. 159, 1848; RS 2992; GS 4067; RGS 6171; CGL 8485; s. 1592, ch. 97-102.

939.12 Cost against state in Supreme Court.—The clerk of the Supreme Court shall give, upon application, a certified copy of any judgment against the state upon appeal in criminal cases, and the state shall pay the same to the appellant, or the appellant's agent or attorney, on demand.

History.—s. 1, ch. 3266, 1881; RS 2993; GS 4068; RGS 6172; CGL 8486; s. 1593, ch. 97-102; s. 133, ch. 2003-402.

939.13 Power of Chief Financial Officer.—The Chief Financial Officer may audit and approve or disapprove any claim or any item thereof against the state for costs, fees or expenses of criminal cases prosecuted in the name of the state, and for which the state is liable, if the Chief Financial Officer is satisfied that the same is legal, just, necessary and correct or otherwise, and may prescribe forms and methods for the same. The Chief Financial Officer shall not dispense with any of the requirements of law relative to the auditing and payment of such accounts, but may prescribe additional requirements.

History.—s. 8, ch. 3702, 1887; RS 2995; GS 4069; RGS 6173; CGL 8487; s. 1594, ch. 97-102; s. 1926, ch. 2003-261.

939.14 County not to pay costs in cases where information is not filed or indictment found.—When a committing trial court judge holds to bail or commits any person to answer a criminal charge in a county court or a circuit court, and an information is not filed nor an indictment found against such

person, the costs of such committing trial shall not be paid by the county, except the costs for executing the warrant.

History.—s. 1, ch. 4123, 1893; GS 4070; RGS 6174; CGL 8488; s. 44, ch. 73-334; s. 43, ch. 2004-11.

939.17 Application of cash deposit to fine and costs.—In any prosecution for an offense against the state or any political subdivision thereof, when money has been deposited by or on behalf of the defendant upon a judgment for the payment of a fine and costs, the clerk shall, under the direction of the court, apply the money deposited in satisfaction of such fine and costs and return the remainder to the depositor.

History.—s. 1, ch. 72-235.

939.185 Assessment of additional court costs and surcharges.—

(1)(a) The board of county commissioners may adopt by ordinance an additional court cost, not to exceed \$65, to be imposed by the court when a person pleads guilty or nolo contendere to, or is found guilty of, or adjudicated delinquent for, any felony, misdemeanor, delinquent act, or criminal traffic offense under the laws of this state. Such additional assessment shall be accounted for separately by the county in which the offense occurred and be used only in the county imposing this cost, to be allocated as follows:

1. Twenty-five percent of the amount collected shall be allocated to fund innovations, as determined by the chief judge of the circuit, to supplement state funding for the elements of the state courts system identified in s. 29.004 and county funding for local requirements under s. 29.008(2)(a)2.

2. Twenty-five percent of the amount collected shall be allocated to assist counties in providing legal aid programs required under s. 29.008(3)(a).

3. Twenty-five percent of the amount collected shall be allocated to fund personnel and legal materials for the public as part of a law library.

4. Twenty-five percent of the amount collected shall be used as determined by the board of county commissioners to support teen court programs, except as provided in s. 938.19(7), juvenile assessment centers, and other juvenile alternative programs.

Each county receiving funds under this section shall report the amount of funds collected pursuant to this section and an itemized list of expenditures for all authorized programs and activities. The report shall be submitted in a format developed by the Supreme Court to the Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives on a quarterly basis beginning with the quarter ending September 30, 2004. Quarterly reports shall be submitted no later than 30 days after the end of the quarter. Any unspent funds at the close of the county fiscal year allocated under subparagraphs 2., 3., and 4., shall be transferred for use pursuant to subparagraph 1.

(b) In addition to the court costs imposed under paragraph (a) and any other cost, fine, or penalty imposed by law, any unit of local government which is consolidated as provided by s. 9, Art. VIII of the State Constitution of 1885, as preserved by s. 6(e), Art. VIII of the State Constitution of 1968, and which is granted the authority in the State Constitution to exercise all the powers of a municipal corporation, and any unit of local government operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the State Constitution of 1885, as preserved by s. 6(e), Art. VIII of the State Constitution of 1968, which is granted the authority in the State Constitution to exercise all the powers conferred now or hereafter by general law upon municipalities, may impose by ordinance a surcharge in the amount of \$85 to be imposed by the court when a person pleads guilty or nolo contendere to, or is found guilty of, or adjudicated delinquent for, any felony, misdemeanor, delinquent act, or criminal

traffic offense under the laws of this state. Revenue from the surcharge shall be transferred to such unit of local government for the purpose of replacing fine revenue deposited into the clerk's fine and forfeiture fund under s. 142.01. Proceeds from the imposition of the surcharge authorized in this paragraph shall not be used for the purpose of securing payment of the principal and interest on bonds.

(c) The disbursement of costs collected under this section shall be subordinate in priority order of disbursement to all other state-imposed costs authorized in this chapter, restitution or other compensation to victims, and child support payments.

(d) The clerk of court shall cause a certified copy of the court order imposing such costs to be recorded in the public records. Such record constitutes a lien against the person upon whom the costs are imposed and shall attach as a lien on any real property owned by such person located in the county in which such order is recorded in the same manner and to the same extent as a judgment recorded as provided in s. 55.10. Such order shall attach as a lien on any personal property owned by such person located in the state upon the filing with the Department of State of a judgment lien certificate regarding such order as provided in ss. 55.202-55.209. A lien created under this paragraph does not attach to, or make subject to execution of levy or foreclosure, any real or personal property otherwise exempt under s. 4, Art. X of the State Constitution. A lien created under this paragraph is enforceable in the same manner as provided by law.

(2) The court shall order a person to pay the additional court cost. If the person is determined to be indigent, the clerk shall defer payment of this cost.

History.—s. 88, ch. 2004-265; ss. 63, 72, ch. 2005-236; s. 3, ch. 2007-71; s. 14, ch. 2009-61; s. 10, ch. 2009-215; s. 35, ch. 2010-162.

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Title XLVII
CRIMINAL PROCEDURE AND CORRECTIONS

Chapter 938
COURT COSTS

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938.27 Judgment for costs on conviction.—

(1) In all criminal and violation-of-probation or community-control cases, convicted persons are liable for payment of the costs of prosecution, including investigative costs incurred by law enforcement agencies, by fire departments for arson investigations, and by investigations of the Department of Financial Services or the Office of Financial Regulation of the Financial Services Commission, if requested by such agencies. The court shall include these costs in every judgment rendered against the convicted person. For purposes of this section, "convicted" means a determination of guilt, or of violation of probation or community control, which is a result of a plea, trial, or violation proceeding, regardless of whether adjudication is withheld.

(2)(a) The court shall impose the costs of prosecution and investigation notwithstanding the defendant's present ability to pay. The court shall require the defendant to pay the costs within a specified period or in specified installments.

(b) The end of such period or the last such installment shall not be later than:

1. The end of the period of probation or community control, if probation or community control is ordered;
2. Five years after the end of the term of imprisonment imposed, if the court does not order probation or community control; or
3. Five years after the date of sentencing in any other case.

However, in no event shall the obligation to pay any unpaid amounts expire if not paid in full within the period specified in this paragraph.

(c) If not otherwise provided by the court under this section, costs shall be paid immediately.

(3) If a defendant is placed on probation or community control, payment of any costs under this section shall be a condition of such probation or community control. The court may revoke probation or community control if the defendant fails to pay these costs.

(4) Any dispute as to the proper amount or type of costs shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of costs incurred is on the state attorney. The burden of demonstrating the financial resources of the defendant and the financial needs of the defendant is on the defendant. The burden of demonstrating such other matters as the court deems appropriate is upon the party designated by the court as justice requires.

(5) Any default in payment of costs may be collected by any means authorized by law for enforcement of a judgment.

(6) The clerk of the court shall collect and dispense cost payments in any case.

(7) Investigative costs that are recovered shall be returned to the appropriate investigative agency that incurred the expense. Such costs include actual expenses incurred in conducting the investigation

and prosecution of the criminal case; however, costs may also include the salaries of permanent employees. Any investigative costs recovered on behalf of a state agency must be remitted to the Department of Revenue for deposit in the agency operating trust fund, and a report of the payment must be sent to the agency, except that any investigative costs recovered on behalf of the Department of Law Enforcement shall be deposited in the department's Forfeiture and Investigative Support Trust Fund under s. 943.362.

(8) Costs for the state attorney shall be set in all cases at no less than \$50 per case when a misdemeanor or criminal traffic offense is charged and no less than \$100 per case when a felony offense is charged, including a proceeding in which the underlying offense is a violation of probation or community control. The court may set a higher amount upon a showing of sufficient proof of higher costs incurred. Costs recovered on behalf of the state attorney under this section shall be deposited into the State Attorneys Revenue Trust Fund to be used during the fiscal year in which the funds are collected, or in any subsequent fiscal year, for actual expenses incurred in investigating and prosecuting criminal cases, which may include the salaries of permanent employees, or for any other purpose authorized by the Legislature.

History.—s. 1, ch. 76, 1846; RS 2983; GS 4057; RGS 6161; CGL 8475; s. 47, ch. 87-243; s. 7, ch. 92-300; s. 4, ch. 97-60; s. 21, ch. 97-271; s. 25, ch. 2001-122; s. 1925, ch. 2003-261; s. 127, ch. 2003-402; s. 5, ch. 2006-176; s. 44, ch. 2008-111; s. 32, ch. 2010-162.

Note.—Former s. 939.01.

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

CASE NO: 48-2008-CF-015606-O

STATE of FLORIDA
Plaintiff,

DIVISION: 16

vs.

CASEY MARIE ANTHONY,

Defendant.

STATE of FLORIDA'S MOTION to TAX SPECIAL COSTS
of INVESTIGATION and PROSECUTION and to RESERVE JURISDICTION

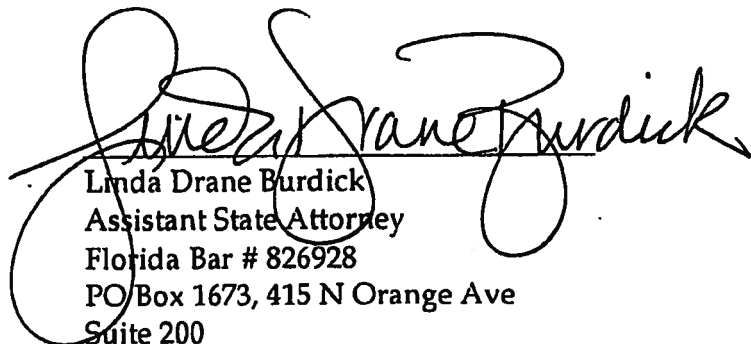
COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, pursuant to Florida Statute 938.27 and moves this Honorable Court to enter an order requiring the Defendant to pay reimbursement for the special costs of investigation and prosecution, above the minimum required by law, and reserve jurisdiction to set the specific amount of those costs.

1. Florida Statute 938.27(1) provides that in all criminal cases the costs of prosecution, including investigative costs by law enforcement agencies, shall be included and entered in the judgment rendered against a convicted person. A mandatory minimum amount is set at \$100 per case for a felony and \$50 per case for a misdemeanor or criminal traffic offense - but the statute also states that: "The court may set a higher amount upon a showing of sufficient proof of higher costs incurred F.S. 938.27(7)&(8).

2. The Sheriff of Orange County, Florida and the Metropolitan Bureau of Investigation (MBI) Task Force incurred in this matter special cost of investigation expenses, above the minimum, for which proof is available, and specifically requests reimbursement for appropriate costs. The efforts and costs of the investigation were extensive and not immediately available and, accordingly, the State of Florida respectfully requests this Court to set a hearing within 60 days to determine total costs of investigation.

WHEREFORE, the State of Florida respectfully requests that, pursuant to the convictions (as defined by F.S. 938.27(1) to include a withholds of adjudication) of the defendant, this Honorable Court issue a Final Judgment that orders the defendant, Casey Marie Anthony, to reimburse the Sheriff of Orange County, Florida and the Metropolitan Bureau of Investigation (MBI) Task Force for the special costs of investigation and to enforce those costs by further orders or refer said costs of investigation to Collections Court for enforcement, as provided by law, pursuant to Florida Statute 938.27(2)(a)&(b), and to reserve jurisdiction to set the specific amount of those costs after future hearing, unless stipulated to by the parties.

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Tax Special Costs of Investigation and Prosecution and Reserve Jurisdiction has been delivered to Jose A. Baez, Counsel for Defendant, 522 Simpson Road, Kissimmee, FL 34744 on this 6th day of July, 2011.


Linda Drane Burdick
Assistant State Attorney
Florida Bar # 826928
PO Box 1673, 415 N Orange Ave
Suite 200
Orlando, FL 32802-1673
(407)836-2402

RECOUPING INVESTIGATIVE COSTS FROM CONVICTED CRIMINALS

by Judge Scott J. Silverman, Dade County

Having served as a Dade County Court Judge for the past five years, I have addressed thousands of criminal cases. The total number of law enforcement hours attributable to the successful prosecution of many of those cases is enormous. On any given weekday, the first floor courtrooms of the Richard E. Gerstein Justice Building are overflowing with police officers.

The vast majority of cases brought before the County Court result in negotiated pleas between the State of Florida and the criminal defendant. In most instances, once a plea is accepted, the officer views the case finished, and leaves the courtroom. The Florida State Legislature offers police agencies, through their individual officers, an opportunity to be reimbursed for costs expended in the investigation of each applicable criminal cases.

The Recoupment Statute

Florida Statute 939.01 is entitled Judgment for Costs on Conviction. The 1987 law provides, in pertinent part, that law enforcement agencies are entitled to a judgment for investigative costs against convicted defendants in both misdemeanor and felony cases. To be eligible, the law enforcement agency must request a judgment for investigative costs and present documentary support for it.

The practical effect of F.S. 939.01 is to lessen the taxpayer burden, and to force the criminal to pay for the expenses incurred by law enforcement agencies during the course of an investigation. It imposes a financial burden upon convicted criminals, in addition to any fines and court costs that may otherwise be imposed.

While "investigative costs" are not specifically defined by the statute, they do include actual expenses incurred while conducting the investigation of the criminal case, as well as the salaries of permanent employees. "Investigative costs" do not include ancillary costs such as judicial salaries, attorneys fees, clerical and reporting services, or juror reimbursement.

Courtroom Procedure

Before a judge is authorized to impose a monetary judgment against a defendant for investigative costs, the defendant must be convicted. Should a defendant be found guilty of the offense charged, but the judge withholds adjudication, the defendant is not convicted for purposes of the statute. In such a case, the judge is prevented from rendering a cost judgment. A defendant must actually be adjudicated guilty before any costs can be levied.

Generally, the state attorney must file a written motion to tax costs against the defendant. By adhering to this procedure, defendants are afforded an opportunity to prepare and be heard on the pending issue thereby satisfying their constitutional right to procedural due process.

The burden of establishing the costs of investigation is on the state attorney. In practice, an officer presents the prosecutor with time and expense records. The prosecutor then attempts to introduce the records into evidence before the court. Accordingly, it is important for law enforcement to work closely with the Office of the State Attorney when seeking these costs. Once the state attorney establishes the costs, the judge is obligated to consider the defendant's financial condition. While the prosecutor has the burden of proving the costs to be assessed, the defendant has the burden of demonstrating his or her financial needs and resources. The court must also consider other factors it deems appropriate in determining whether to order costs and the amount of such costs.

Enforcing the Cost Judgment

The court can order the cost judgment paid in several ways. It can direct a defendant to pay the amount immediately. In addition, a judge can specify a period in which payment is to be made or may designate an installment payment plan. Any default in payment of costs ordered may be collected by any means authorized by law for the enforcement of judgments.

In the event that a defendant is placed on probation or community control, the judge must make payment of the investigative cost judgment a special condition of such sentence. If the required payment is not made, the court may revoke the defendant's probation or community control.

The legislature apparently wants to encourage the collection of investigative costs by providing for a favorable disposition of any funds collected. Any costs received are returned to the investigative agency which incurred the expense. The court is authorized to direct the clerk to collect and dispense the cost payments in any applicable case.

Where to from here?

The investigative cost judgment statute presents law enforcement agencies with an opportunity to recoup the costs they incur in the investigation of convicted criminals. The statute affords police agencies with a method of increasing funding in an age of tighter and leaner budgets. Some may argue that its strength lies in its ability to compel criminals to be socially and financially cognizant of their impact on the criminal justice system. Whether police agencies fully avail themselves of the provisions of F.S. 939.01 and its underlying purpose remains to be seen.



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KEN BURKE, CPA

CLERK OF THE CIRCUIT COURT
PINELLAS COUNTY, FLORIDA

Adult - Case Progress Docket - Fct K

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Type	Apr	Cal	Final Disposition		Comp	Division
						I

Name	COC
[REDACTED]	DEFENDANT A

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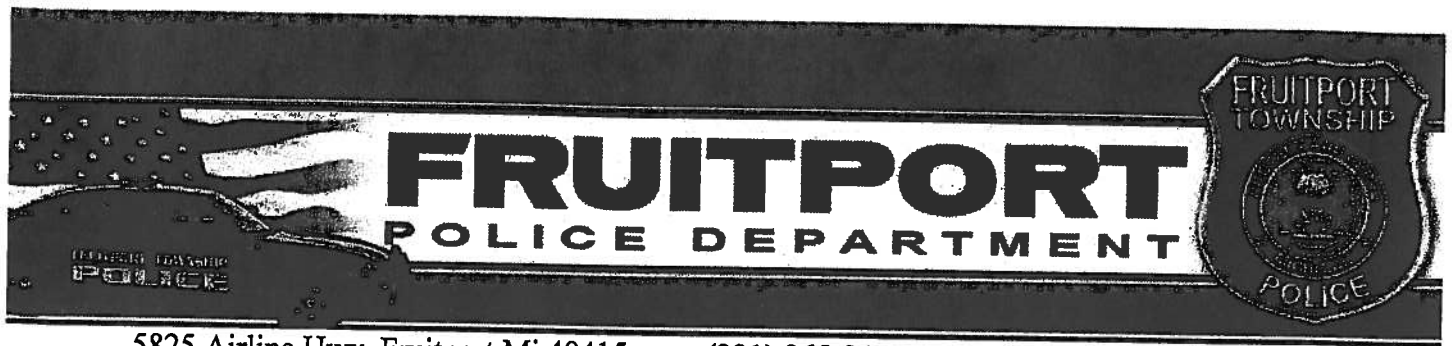
Reset Original Sort	Docket Date	Docket Entry	Defendant
1	04/30/2012	RESPONSE: CLK TO ATTY HIGBEE: COST OF COPIES	A
2	04/25/2012	FAX COPY OF: HIGBEE & ASSOCIATES TO CLERK RE: COPIES	A
3	02/13/2012	OUTSTANDING COS FEES WAIVED	A
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7	01/11/2012	NOTICE OF HEARING: 021312/0830 AM - MTN/EARLY TERM PROB	A
8	12/15/2011	COSTS OF PROSECUTION PAID - \$100.00	A
9	12/15/2011	INVESTIGATIVE COSTS PAID - \$125.00	A
10	12/15/2011	SATISFIED ASSESSED FINE/COSTS - \$550.00	A
11	05/24/2011	JUDGMENT FOR FINE/COST \$ 137F/638C	A
12	05/10/2011	CERTIFICATE OF DISCHARGE TO BOND AGENCY PS5084020	A
13	05/09/2011	DNA TESTING FEE TO PCSO 7.00	A
14	05/09/2011	NO CONTACT WITH: VICTIM	A
15	05/09/2011	RESTITUTION IS A CONDITION OF PROBATION WEST-MARINE-SUPPLY	A
16	05/09/2011	RESTITUTION ORDERED \$ 399.99 WEST-MARINE-SUPPLY	A
17	05/09/2011	INVEST COSTS CONDITION OF PROBATION	A
18	05/09/2011	INVESTIGATIVE COSTS ASSESSED \$ 125/TS	A
19	05/09/2011	COSTS OF PROSECUTION ASSESSED \$ 100.00	A
20	05/09/2011	FINE/COSTS A CONDITION OF PROBATION \$ 550.00	A
21	05/09/2011	PAY COURT COST \$ 550.00	A
22	05/09/2011	PROBATION ORDERED - ADJ/WH 18M/DO	A
23	05/09/2011	SENTENCED UNDER GUIDELINES	A
24	05/09/2011	CHANGED PLEA TO GUILTY	A
25	05/03/2011	NOTICE OF PRE-TRIAL - 050911 COURTROOM: I AT 08:30	A
26	05/02/2011	NOTICE OF HEARING GENERATED IN COURT	A
27	05/02/2011	PRE-TRIAL HRG SET: 050911/0830 AM -I-	A
28	05/02/2011	WAIVED RIGHT TO SPEEDY TRIAL (REAFFIRMED)	A
29	05/02/2011	ORDER GRANTING: D/MTN TO CONTINUE	A
30	04/11/2011	NOTICE OF PRE-TRIAL - 050211 COURTROOM: I AT 08:30	A
31	04/08/2011	REMOVE FROM: PTL 041111/0830 AM -I-	A
32	04/08/2011	PRE-TRIAL HRG SET: 050211/0830 AM -I-	A
33	04/08/2011	WAIVED RIGHT TO SPEEDY TRIAL	A
34	04/08/2011	ORDER GRANTING: D/MTN TO CONTINUE	A
35	03/22/2011	NOTICE OF PRE-TRIAL - 041111 COURTROOM: I AT 08:30	A
36	03/21/2011	PRE-TRIAL HRG SET: 041111/0830 AM -I-	A
37	03/21/2011	WAIVED RIGHT TO SPEEDY TRIAL (REAFFIRMED)	A
38	03/21/2011	ORDER GRANTING: D/MTN TO CONTINUE	A
39	02/24/2011	NOTICE OF PRE-TRIAL - 032111 COURTROOM: I AT 08:30	A
40	02/22/2011	ACK OF ADDL TANGIBLE EVIDENCE	A
41	02/22/2011	WAIVER OF APPEARANCE: PRE-TRIAL	A
42	02/22/2011	PRE-TRIAL HRG SET: 032111/0830 AM -I-	A

43	02/22/2011	WAIVED RIGHT TO SPEEDY TRIAL (REAFFIRMED)	A
44	02/22/2011	ORDER GRANTING: D/MTN TO CONTINUE	A
45	01/25/2011	NOTICE OF PRE-TRIAL - 022211 COURTROOM: I AT 08:30	A
46	01/24/2011	PRE-TRIAL HRG SET: 022211/0830 AM -I-	A
47	01/19/2011	DEMAND NOTICE INTENTION TO CLAIM ALIBI	A
48	01/19/2011	ANSWER TO DEMAND FOR DISCOVERY	A
49	01/13/2011	COPY OF INFORMATION SENT TO ATTORNEY	A
50	01/10/2011	NOTICE OF ARRAIGNMENT - 012411 COURTROOM: I AT 01:30	A
51	01/06/2011	INFORMATION FILED: (1CT) GRAND THEFT	A
52	11/08/2010	WAIVED RIGHT TO SPEEDY TRIAL	A
53	09/29/2010	DEMAND/REQUEST FOR COPY OF INFORMATION	A
54	09/29/2010	DEMAND FOR DISCOVERY &	A
55	09/29/2010	WRITTEN PLEA NOT GUILTY-ATTORNEY &	A
56	09/29/2010	NOTICE OF APPEARANCE: JOHN D ANDREOPOULOS &	A
57	09/27/2010	SURETY BOND POSTED	A
58	09/26/2010	INVESTIGATIVE COSTS REQUESTED \$ 125/TS	A
59	09/26/2010	COMPLAINT - GRAND THEFT	A

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Apr Appearance Date
COC Connection Code (Connection to Case)
Comp Date Case Closed



Warrant Summary:

Original Misd: 126

Original Fel: 11

FTA / FCJ: 169

Prob Viol: 18

Total: 324

A handwritten signature in black ink, appearing to be "AB" or similar initials, located at the bottom center of the page.

BASIS OF CLAIM BY FRUITPORT TOWNSHIP POLICE DEPARTMENT AGAINST SUSPECT:

- Suspect was apprehended for Retail Fraud at Claire's on 02/11/2009.
- A warrant was requested for her arrest related to this offense.
- The warrant was authorized.
- Suspect was lodged on 03/22/2009 for this warrant. She bonded out.
- Suspect was arraigned on this charge on 04/03/2009.
- A pre-trial was scheduled for 04/15/2009. Suspect appeared for this. A plea was scheduled for 07/22/2009.
- Suspect failed to appear for the 07/22/2009 plea. A bench warrant was issued.
- On 08/23/2010, suspect was taken into custody by Western Michigan University Police Department for an outstanding warrant related to this offense (FTA on Plea Hearing).
- Fruitport Township Police Department responded to meet with Western Michigan University Police Department to take custody of suspect and transport her to the Muskegon County Jail to be lodged on the outstanding warrant.
- No request for cost reimbursement was pursued at that time.
- Suspect was sentenced on the Retail Fraud conviction on 10/04/2010.
- Suspect failed to pay fines and costs and also failed to attend the "ARM" program which were part of her sentence. A bench warrant was issued for suspect on 01/24/2011.
- On 08/18/2011, Fruitport Township Police Department was notified suspect had been taken into custody and lodged at the Kalamazoo County Jail.
- On 08/19/2011, representatives from Fruitport Township Police Department (Officer Schmidt and D/Sgt. Morningstar) responded to the Kalamazoo County Jail to take custody of suspect. Suspect was transported from the Kalamazoo County Jail to the Muskegon County Jail where she was lodged on the outstanding warrant.
- Mileage for this trip was calculated using a Microsoft computer program called MapPoint. The round trip mileage was calculated to be approximately 188 miles. This was consistent with the starting (80,381) and ending mileage (80,475) noted for the "in custody" in which suspect was transported from Kalamazoo County Jail to the Muskegon County Jail.
- Mileage cost was calculated as follows: 188 Miles x \$.555 / Mile = \$104.34.
- Estimated time for this trip was calculated to be approximately 3 hours using Microsoft MapPoint. This, too, was consistent with the recorded start (Approximately 0945 Hours) and end (Approximately 1315 Hours) times for the trip.
- Hourly wage (benefit wage) for officers is calculated to be approximately \$36.00 / Hour.
- Personnel cost related to this transport was calculated as follows: 3 Hours x \$36 / Hour = \$108.00.
- The decision to conduct this transport using two officers was a local decision and therefore the cost of the second officer for this transport is not being requested through this action.
- Fruitport Township Police Department requests reimbursement in the amount of \$212.34.
- ***Basis: Suspect committed a criminal act in Fruitport Township. It was the suspect's responsibility to appear as directed by the court and to abide by the sentence of the court. She failed to do so on multiple occasions. This resulted in expenses to the Fruitport Township Police Department (and, ultimately, to the taxpayers in Fruitport Township and the State of Michigan) that should properly be assessed to the offender rather than the taxpayers in the community where she committed the offense.***